

December 20, 2004
Docket No.: DP-309512/DP-309703 (7500/248)
Serial No.: 10/664,759
Filed: September 17, 2003
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-- REMARKS --

Applicant thanks the Examiner for the noted allowability of claims 1-10 and 20-21, and for the many courtesies extended in the December 14, 2004 interview with his counsel.

The 35 U.S.C. §101 rejection of claims 11-19 is traversed.

In an effort to expedite prosecution, Applicant has amended the preamble of claim 11 to clarify that the computer readable medium is encoded with a computer program. *See*, MPEP §2106(a) ("a claimed computer-readable medium encoded with a computer program is a computer element which defines structural and functional interrelationships between the computer program and the rest of the computer which permit the computer program's functionality to be realized, and is thus statutory").

It is well settled that functional descriptive material, such as computer programs which impart functionality when employed as a computer component are patentable. *See*, e.g. MPEP 2106(B)(1). Independent claim 11 is directed to a "computer usable medium for selectively inhibiting wheel rotation of a vehicle during brake failure," which constitutes a structure that is statutory matter under §101.

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To be a statutory process, a claimed computer-related process either results in a physical transformation outside the computer or be limited to a practical application within the technological arts. See, MPEP 2106(B)(2)(b). In claim 11, and the claims dependent therefrom, the computer-related process results in "applying the at least one command brake force to the at least one non-failed brake wherein at least one of an undesired yaw moment and a yaw moment rate of change are limited to predetermined values." Application of a command brake force is precisely the "physical transformation" envisioned by the MPEP. In other words, the computer-related process claimed in claim 11 is statutory because it requires physical acts (application of brake force) to be performed outside the computer (at the brakes) independent of and following the steps to be performed by a programmed computer (the program determines the amount of force to be applied), where those acts involve the manipulation of tangible physical objects (the brakes) and result in the object having a different physical attribute (the extent of the braking force) or structure. MPEP §2106(B)(2)(b)(i), citing Diamond v. Diehr, 450 U.S. at 187.

Therefore, independent claim 11 is drawn to statutory subject matter, and Applicant requests that the §101 rejection to claim 11, and claims 12-19 depending directly or indirectly therefrom, be withdrawn.

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CONCLUSION

The Examiner's rejections of claims 11-19 have been obviated by Applicant's arguments. The Applicant respectfully submits that claims 1-21 herein fully satisfy the requirements of 35 U.S.C. §§102, 103 and 112, as well as 37 CFR 1.126. In view of the foregoing, favorable consideration and early passage to issue of the present application is respectfully requested.

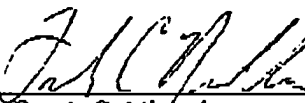
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Respectfully submitted,
ALEKSANDER B. HAC

DELPHI TECHNOLOGIES, INC.
Legal Staff
5825 Delphi Drive
Mail Code: 480-410-202
Troy, Michigan 48098
Phone: (248) 813-1250
Fax: (248) 813-1211

Michael D. Smith
Registration No. 40,181
Attorney for Applicants

CARDINAL LAW GROUP
Suite 2000
1603 Orrington Avenue
Evanston, Illinois 60201
Phone: (847) 905-7111
Fax: (847) 905-7113



Frank C. Nicholas
Registration No. 33,983
Attorney for Applicants